ALTS

ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

June 23, 2004

The Honorable Michael Powell
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

01-338

Dear Chairman Powell:

On June 16, 2004, the D.C. Circuit issued its mandate in *USTA v. FCC*, and ordered the FCC to commence remand proceedings in accordance with the court's opinion. ALTS and its member companies look forward to working with you and the rest of the Commission as you complete those remand proceedings as expeditiously as possible. As representative of the facilities-based CLECs, ALTS appreciates your desire to advance facilities-based competition, and we stand ready to assist you in developing a roadmap that promotes innovation and network deployment. In particular, we appreciate your recognition that a climate of ongoing uncertainty will depress investment and hinder the industry's migration to facilities-based solutions.

The Commission and the Administration have both wisely recognized the need to avoid massive disruption to tens of millions of consumers and small businesses while the Commission quickly develops new rules to implement section 251 of the 1996 Act. Unfortunately, as the Commission works diligently to address its obligations on remand, the Bell companies have wasted no time in beginning the process of turning off service and raising prices to end users. Particularly at risk of imminently losing choice are the nation's small businesses, which rely on facilities-based CLEC service offerings over high-capacity loops as the only alternative to the Bell companies. The U.S. Small Business Administration, in its March 2004 report on small business telecommunications use, found that 22% of the nation's small businesses currently subscribe to CLEC telecommunications services.[1] Notwithstanding ostensible representations to you that they will not disrupt service while the Commission's remand proceeding is underway, the Bell companies have, in recent days, made their intentions clear. To wit:

- On June 18, Verizon began informing state commissions that, pursuant to the "change of law" provisions of its interconnection agreements, Verizon can begin discontinuing providing loops, switching, and transport immediately. According to Verizon, its interconnection agreements "expressly permit Verizon, at a minimum, to cease providing, as UNEs, mass market switching, high capacity loops and transport, and dark fiber, either immediately upon the issuance of the

[1] "A Survey of Small Businesses' Telecommunications Use and Spending," Small Business Administration Office of Advocacy, March 2004, at ii.

D.C. Circuit's mandate or shortly thereafter."[2] This follows Verizon's statement to a state commission that "there have never been any lawful section 251 unbundling rules. Accordingly, upon issuance of the mandate, there will not be a "change of law" to eliminate previously authorized UNEs, but merely an affirmation that there have never been lawful UNEs to change." This makes clear that Verizon's commitment to the FCC is an empty shell.[3]

- On June 16, Qwest began providing CLEC customers "formal notice" that because "the court vacated the FCC's unbundling rules for "mass market" switching; DS1, DS3, and dark fiber loops; and DS1, DS3, and dark fiber dedicated transport . . . as of today, the FCC's rules no longer require ILECs such as Qwest to provide unbundled access to those network elements." Qwest noted in its letter that it was beginning the process of discontinuing those offerings. As for UNE-P, Qwest noted it has "pledged not to raise rates for UNE-P or its commercial equivalent for the remainder of the year." Qwest makes no such commitment for any UNE other than UNE-P.[4]
- On June 18, BellSouth began informing its state commissions that it "intends to implement the Court's mandate" by immediately invoking the "change of law provisions" on its interconnection agreements and adding new amendments to those agreements that "will reflect the Court's mandate by eliminating language from the interconnection agreement concerning those network elements provided under the FCC rules that have now been vacated."[5]
- On June 17, in response to a request for clarification as to whether the dark fiber UNE was included in its FCC commitment letter, SBC clarified that, as to "SBC's voluntary commitment as outlined in the recent accessible letter, dark fiber is not part of that commitment."[6]

In summary, the Bell company commitment letters are nothing more than diversionary tactics, designed to provide an empty promise to maintain the status quo, while outside of Washington, D.C., the Bell companies are moving quickly to raise prices for, or even disconnect, millions of CLEC customers. Notwithstanding the Bell company commitments regarding UNE-P, the Bells have clearly targeted facilities-based competition for elimination by cutting off access to dark fiber and seeking immediate and dramatic rate increases for loops and interoffice transport. If the FCC does not step forward to truly preserve the status quo during this period that remand proceedings are

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[2] Verizon's Motion to Hold Proceeding in Abeyance, Docket No. UT-043013, Washington Utilities and Transportation Commission, June 18, 2004. Verizon takes this position notwithstanding the fact that the D.C. Circuit decision does not vacate or remand the Commission's high-cap loop rules.

[3] Letter dated June 1, 2004, from Bruce D. Cohen, Vice President and General Counsel, Verizon New Jersey, to Kristi Izzo, Secretary, New Jersey Board of Public Utilities, at 2.

[4] Qwest Announcement INTC.06.16.04.B.000436_DC_CIR_Crt_Dec, June 16, 2004, from Teresa A. Taylor, Executive Vice President, Wholesale Markets, Qwest Communications.

[5] Letter dated June 18, 2004, from Bennett L. Ross, General Counsel, BellSouth-Georgia, to Reece McAlister, Executive Secretary, Georgia PSC, at 2.

[6] SBC email dated June 17, 2004, to Eric Drummond, Counsel, Sifuentes, Drummond, and Smith LLP, Austin, Texas.

underway, the nation's consumers and small businesses will quickly lose access to the true facilities-based competition that the Commission intends to advance.

ALTS appreciates your commitment to take the necessary steps to prevent this kind of harm to facilities-based carriers and their customers during the short time period necessary to complete a proceeding on remand. ALTS and its members stand ready to assist you in crafting the necessary protections until new rules are in place. Specifically, we ask that you treat the Bell commitment letters as insufficient and urge you to proceed quickly to provide necessary protection to consumers and small businesses from imminent service disconnection and price increases.

Respectfully submitted,

John Windhausen, Jr.
President
ALTS

cc:
FCC Commissioners and Legal Advisors
Acting NTIA Administrator Michael Gallagher and Meredith Attwell